

FILED

JAN 03 2020

**Clerk, U S District Court
District Of Montana
Billings**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

EUGENE ALLEN LINWOOD, JR.,

Plaintiff,

vs.

TOM GREEN, Warden; and D.W.
NODLAND, Deputy Warden,

Defendants.

CV 19-40-BLG-SPW

**ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND
RECOMMENDATIONS**

The United States Magistrate Judge filed Findings and Recommendations on December 2, 2019. (Doc. 9.) The Magistrate recommended the Court dismiss the matter, certify that any appeal would not be taken in good faith, and have the docket reflect that the dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). (Doc. 9 at 4.)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. Fed. R. Civ. P. 6(d) allows three additional days after the period would otherwise expire when, as here, a party is served via mail. No objections were

filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error. The Plaintiff's factual allegations, accepted as true, do not permit the Court to infer more than a mere possibility of misconduct. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing Fed. R. Civ. P. 8(a)(2)). The Plaintiff's complaint fails to state a claim upon which relief can be granted. Accordingly,

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 9) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED:

1. The Plaintiff's Complaint (Doc. 2) is **DISMISSED**.
2. The Clerk of Court shall close this matter and enter judgment in favor of the Defendants pursuant to Fed. R. Civ. P. 58.
3. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

4. The Clerk of Court shall have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

DATED this 3rd day of January, 2020.

Susan P. Watters
SUSAN P. WATTERS
United States District Judge